

Introduction to גיטין

כי יקח איש אשה ובעלה והיה אם לא תמצא חן בעיניו כי מצא בה ערות דבר וכתב לה ספר קריחת ונתן קנדה ושלחה מביתו: דברים כד, א

From this verse – the lone Scriptural text regarding the circumstances which allow for a divorce, the proper preparation of the writ (גט) the proper transmission of the גט from the husband to the wife – we infer numerous details, the most significant of which revolve around the **bolded** words

- 1) the גט is written by (or on behalf of) the husband
- 2) it must be written for the sake of the dissolving this particular marriage – i.e. for this woman's "name" (לשמה)
- 3) the גט must be written
- 4) it must create complete excision (as opposed to an ongoing condition that maintains the divorce)
- 5) he must hand the גט to her (or place it into her property)
- 6) she must be of age and ability to receive the גט
- 7) an agent may be employed to send the גט (שליח הולכה) or to receive the גט (שליח קבלה)
- 8) (from the *italicized* words) there is a requirement of 2 witnesses to substantiate the divorce (דבר::דבר)

גיטין deals chiefly with the various aspects of גירושין, including כשרות הגט (and the demand of לשמה), proper שליחות and acceptable תנאים and their completion, as well as a practicum. The מסכת has several Halakhic tangents, including all of chs. 4-5 (as per below) and a number of discussions that, in the usual fashion, spin off of the main Halakhic topic. There are, as well, several significant Aggadic sections, notably the אנדות about the destruction of ירושלים towards the end of the 5th chapter and a long piece about demons and possession in the 7th chapter.

גיטין includes 9 chapters which are discussed over 90 pages of גמרא; unlike מסכת סוטה, most of the material is Halakhic and we will, generally speaking, have far fewer Scriptural texts with which to contend.

The breakdown of the chapters is as follows:

- 1) The ordinance of an agent, bringing a גט from abroad, testifying to its validity (see below)
- 2) כשרות הגט
- 3) the requirement of לשמה and ancillary considerations – specifically the applications of חוקת חיים
- 4) תיקון עולם I – various תקנות established during 1st c. BCE – 2nd c. CE – to promote social order
- 5) תיקון עולם II (continuation)
- 6) Proper agency for a גט
- 7) תנאי הגט – various conditions and their completion which validate – or impede – a גט
- 8) ונתן בידה – requirement for גט to reach her property; various requirements of the גט
- 9) Practical presentation of הלכות גיטין and ancillary potpourri of laws

As mentioned, the first chapter (and beginning of the 2nd) focus on a specific ordinance legislated (evidently) in the 1st century, requiring an agent bringing a גט from abroad to declare that he witnessed the writing (בפני נכתב) and signing (בפני) of the גט (נחתם).

A bit of background:

- 1) a גט must be given by the husband to his wife – hand to hand.
- 2) However, as with many areas of הלכה, an agent can act *in locus* of the husband. If the two live in different towns and he isn't traveling, if he doesn't want to see her etc. – for any reason, he may use a שליח (which will be defined later) to "send" the גט (שליח הולכה)
- 3) The woman may also send an agent to receive the גט (שליח קבלה). A שליח הולכה may hand the גט to a שליח קבלה, who then brings it to the wife.
- 4) Every גט requires proper witnesses – although which witnesses are the "critical" ones (the ones signed on - עדי - or the ones who witnessed the handing over of the גט - עדי מסירה) is subject to a dispute between ר"מ and ר"א. It is the signature of these witnesses that is the referent of נחתם.

The parameters of this law are fairly clear, but the reason for the ordinance was the subject of a dispute between רבה and his student רבא. This dispute occupies our attention during the first significant סוגיא.

A tangential consideration that occupies the attention of part of our opening משניות and, subsequently, several passages in the גמרא, are the borders of א"י. The reason for this is that the ordinance only applies to גיטין brought from חו"ל to א"י or from one area in חו"ל to another – but not to גיטין sent from one location in א"י to another; hence, the Halakhic boundaries must be presented here. The conclusions reached in this סוגיא have far-reaching implications, regarding תרומות ומעשרות and other מצוות התלויות בארץ as well as דיני טהרה and several other geographically sensitive areas of law. Since this is the topic of משנה ב' and that משנה isn't discussed for several דפים, we will (as is our wont) skip משנה ב' in our first study and return to it when we get to :ז and it is addressed in the גמרא.

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2a (משנה א') → 3a (אתי לאיחלופי בקיום שטרות דעלמא בעד אחד)

- I 'בפי' ובפי' (נ) בפני נכתב ובפני נחתם general obligation of testifying to משנה א'
- a ת"ק – if he brings it from מדינת הים (overseas)
 - b ר"ג – even from רקם וחגר (border towns)
 - c ר"א – even from כפר לודים to לוד כפר לודים was "swallowed" up within the border of the Land
 - d חכמים – only if he brings from מדה"י or brings from one province to another within מדה"י
 - e רשב"ג – even from one hegemony to another (two governments each controlling part of one town)
- II reason for decree:
- a רבה – since (outside of Israel), they aren't expert in ensuring that the גט be written לשמה
 - b רבא – since we have no access to the witnesses (who signed there) to validate their signatures
 - i split the difference:
 - 1 if two brought it (only רבה would still require the declaration)
 - 2 from one province to another within א"י (only רבא would still require the declaration)
 - 3 within one province in מדה"י (only רבה would still require declaration)
 - c challenges
 - i to רבה: why shouldn't we require 2 witnesses as in all testimony?
 - 1 Answer: באיסורין: עד א' נאמן
 - (a) Challenge: that rule only applies where there is no חזקת איסור that the witness is changing
 - (i) For example: a piece of meat of unknown status, where there is no חזקת איסור
 - (ii) However: in our case, she has חזקת אשת איש, which this (lone) witness is overturning
 - (iii) And: we maintain that any דבר שבערווה requires 2 witnesses (דבר::דבר)
 - (b) Answer: most בתי דין are expert and it is a rabbinic ordinance due to a concern for those few that aren't; in order to avoid problems of עיגון, רבנן allowed one witness here
 - (i) Challenge: this will lead to a severe consequence, as the husband will challenge the גט
 1. explanation: since we only require 1 witness, the husband may effectively challenge the גט
 2. answer: since the שליח hands the גט over in front of 2 or 3, he will be careful to ascertain that the husband really intends to divorce her and won't recant
 - ii to רבא: why shouldn't we require 2 witnesses as with any validation of a signature (קיום שטרות)?
 - 1 Answer: באיסורין: עד א' נאמן
 - (a) Challenge: that rule only applies where there is no חזקת איסור that the witness is changing
 - (i) For example: a piece of meat of unknown status, where there is no חזקת איסור
 - (ii) However: in our case, she has חזקת אשת איש, which this (lone) witness is overturning
 - (iii) And: we maintain that any דבר שבערווה requires 2 witnesses (דבר::דבר)
 - (b) Answer: קיום שטרות itself doesn't really require proper testimony as per ר"ל's dictum:
 - (i) ל"ל witnesses signed on to a document are considered (מה"ת) to have been confirmed in ב"ד
 - (ii) consideration: in order to avoid problem of עיגון, רבנן allowed one witness here
 - (iii) Challenge: this will lead to a severe consequence, as the husband will challenge the גט
 1. explanation: since we only require 1 witness, the husband may effectively challenge the גט
 2. answer: since the שליח hands the גט over in front of 2 or 3, he will be careful to ascertain that the husband really intends to divorce her and won't recant
- d arguments:
- i language of declaration – בפני נכתב (without "לשמה") and also בפני נחתם
 - 1 to רבא: no mention of לשמה proves that that isn't the consideration
 - (a) defense: if we required 3 words, he may forget one and invalidate (but won't forgot 1 of 2 words)
 - 2 to רבה: mention of בפני נכתב proves it isn't about שטרות קום
 - (a) defense: if we only required נחתם, we'd mistakenly allow 1 witness for regular קיום שטרות
 - (i) challenge: no reason to confuse:
 1. קיום שטרות דעלמא. "we recognize", woman nor party to the case not accepted as witness
 2. בפני נחתם. "בפני", woman as well as party to the case (husband) accepted
 - (ii) answer: if the witness said "I recognize" instead of בפני, he'd be believed (רבא would have to take this position)
 - (iii) therefore: we may confuse this case with קיום שטרות דעלמא
 - (iv) therefore: require בפני נכתב as well, in order to distinguish between this and קיום שטרות דעלמא